

# POLICY MANUAL

## State Mental Health, Mental Retardation and Substance Abuse Services Board Department of Mental Health, Mental Retardation and Substance Abuse Services

### **POLICY 1041 (SYS) 06-4 Services for Individuals with Mental Illnesses, Mental Retardation, or Substance Use Disorders Who Are or Are at Imminent Risk of Becoming Involved with the Criminal Justice System**

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<b>Authority</b>	Board Minutes Dated: December 8, 2006 Effective Date: December 8, 2006 Approved by Board Chairman s/Victoria Huber Cochran
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<b>References</b>	§§ 16.1-356, 16.1-357, 19.2-169.1, 19.2-169.2, 19.2-169.5, 19.2-169.6, 19.2-264.3:1.1, 19.2-264.3:1.2; Chapters 11 (§ 19.2-167 et seq.) and 11.1 (§ 19.2-182.2 et seq.) of Title 19.2; and §§ 37.2-300, § 37.2-304, 37.2-500, 37.2-504, 37.2-505, 37.2-601, 37.2-605, 37.2-606, and 37.2-700 et seq. of the <i>Code of Virginia</i> (1950), as amended STATE BOARD POLICY 1034 (SYS) 05-1 Partnership Agreement STATE BOARD POLICY 1035 (SYS) 05-2 Single Point of Entry and Case Management Services STATE BOARD POLICY 1036 (SYS) 05-3 Vision Statement STATE BOARD POLICY 1038 (SYS) 06-1 The Safety Net of Public Services <i>NGRI Manual: Guidelines for the Management of Individuals Found Not Guilty by Reason of Insanity</i> (July, 2003), Department
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<b>Supersedes</b>	STATE BOARD POLICY 1014 (SYS) 86-20 Provision of Forensic Services
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<b>Background</b>	Sections 37.2-300, 37.2-304, 37.2-500, 37.2-504, 37.2-601, 37.2-605, and 37.2-700 et seq. of the <i>Code of Virginia</i> authorize the establishment and operation of state hospitals and training centers, hereafter referred to as state facilities, and community services boards and behavioral health authorities, hereafter referred to as CSBs. STATE BOARD POLICY 1034 recognizes and supports the collegial relationship between CSBs and the Department and establishes the Central Office, State Facility, and CSB Partnership Agreement as the basis for this relationship. STATE BOARD POLICY 1035 recognizes and supports the role of CSBs as the single points of entry into publicly funded mental health, mental retardation, and substance abuse services and provides policy guidance on the implementation of this role. STATE BOARD POLICY 1036 articulates a vision that promotes self-determination, empowerment, recovery, resilience, health, and the highest possible level of consumer participation in all aspects of community life, including work, school, family, and other meaningful relationships. STATE
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**Background**  
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BOARD POLICY 1038 identifies the joint responsibility of the Department and CSBs for assuring to the greatest extent practicable the provision of a safety net of public services and supports in safe and suitable settings for individuals with mental illnesses, mental retardation, or substance use disorders who are in crisis or have severe or complex conditions, cannot otherwise access needed services and supports, and are uninsured, underinsured, or otherwise economically unable to access appropriate service providers or alternatives.

Nationally, articles and studies have identified jails and prisons as the country's largest institutions housing individuals with mental health or substance abuse treatment needs. Surveys and studies have documented the presence of thousands of individuals with mental illnesses or substance use disorders in local and regional jails, prisons, and juvenile justice facilities across Virginia. Many of these individuals are being held while awaiting trial and are unable to access opportunities for pre-trial release, or they have been sentenced to those facilities for minor or non-violent crimes, such as trespassing, disorderly conduct, and public drunkenness; others have been sentenced for more serious crimes that may have been related to their disorders, such as resisting arrest or assault. While, under many circumstances related to the nature and extent of their criminal justice system involvement, certain juvenile detainees or inmates with mental illnesses or substance use or co-occurring disorders in juvenile justice facilities, local or regional jails, or prisons must remain incarcerated, others could have been diverted from those facilities, remaining in their communities to receive needed treatment services.

The criminal justice system in Virginia includes general and juvenile and domestic relations district courts; circuit courts; sheriffs; local and regional jails; police departments; Department of Juvenile Justice (DJJ) facilities, juvenile detention facilities, Department of Corrections (DOC) facilities, and local community corrections and probation and state parole offices.

Forensic services provide evaluations or treatment for individuals involved with the courts, who are in custody or under a court order. Services are provided in a variety of settings approved by the court, including general inpatient psychiatric units, state hospitals, local and regional jails, juvenile detention centers, and in the community. Individuals who may need forensic services are defendants, jail inmates, acquittees found not guilty by reason of insanity (NGRI), parolees or probationers, or individuals at other points of contact in the criminal justice system, such as capital defendants requiring expert evaluations.

Forensic evaluations include pretrial and post-trial assessments. Current pretrial assessments determine (1) the competency of adults and juveniles to stand trial, (2) sanity at the time of the offense, and (3) waivers of juvenile court jurisdiction. Current post-trial assessments determine or include (1) amenability to treatment, (2) need for hospitalization, (3) assessments of risk to the community and need for treatment in a secure setting or the community, (4) not guilty by reason of insanity (NGRI) conditional release to the community, and (5) capital sentencing.

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**Background**  
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Forensic treatment services address an individual's mental illness or substance use disorder in order to attain, maintain, or restore a person's capacity or competence to participate in legal proceedings affecting his or her legal status or safe return to the community. Forensic services do not include inpatient or community evaluations or treatment of individuals identified as sexually violent predators, pursuant to § 37.2-900 et seq. of the *Code of Virginia*. The Department of Corrections provides all mental health treatment services to its prisoners.

Forensic services typically have a significant impact on an individual's legal situation, liberty, or access to the community. Forensic services are linked and inextricably interdependent with treatment services for these individuals; the boundary between them is necessarily transparent and seamless.

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**Purpose**

To articulate policy for the provision of forensic and treatment services to individuals with mental illnesses, mental retardation, or substance use or co-occurring disorders who are or are at imminent risk of becoming involved with the criminal justice system.

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**Policy**

It is the policy of the Board to support the provision of quality services to individuals with mental illnesses, mental retardation, or substance use disorders who are involved in or are at imminent risk of becoming involved in the criminal justice system. Services for these individuals shall incorporate and reflect the vision in STATE BOARD POLICY 1036 and be provided in a manner consistent with STATE BOARD POLICIES 1034, 1035, and 1038.

It is also the policy of the Board to encourage and support the identification, development, and implementation of an array of services and initiatives to prevent the involvement of individuals with mental illnesses or emotional disturbances, mental retardation, or substance use or co-occurring disorders in the criminal justice system. The Department and CSBs shall seek funds for and implement an array of these services and initiatives to the greatest extent possible.

Further, it is the policy of the Board to encourage and support the development of an array of pre- and post-booking and pre-trial alternatives and community treatment services to divert individuals with mental illnesses or emotional disturbances, mental retardation, or substance use or co-occurring disorders from incarceration in local or regional jails or juvenile detention facilities whenever that is legally possible and clinically appropriate and enable these individuals to remain in the community.

These alternatives and services include crisis intervention teams, crisis stabilization programs, and mental health courts. Implementation of these alternatives and programs could relieve some of the overcrowding and burdens experienced by local and regional jails and juvenile detention facilities, and they

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might prevent future admissions of these individuals to DOC facilities or DJJ correctional centers. The Department and CSBs shall seek funds for and implement an array of these pre- and post-booking and pre-trial diversion alternatives and services to the greatest extent possible.

It is also the policy of the Board that the Department and CSBs shall respond to the needs of the courts for access to forensic evaluation and treatment services in accordance with the applicable provisions of the *Code of Virginia*. Forensic evaluation and treatment services shall be provided in an expedient and responsive manner to the greatest extent and in the least restrictive manner possible to ensure that the constitutional rights of consumers with a forensic status are protected and they are returned to the community as soon as is clinically appropriate and legally possible.

Further, it is the policy of the Board that the goals and requirements of the behavioral health services and criminal justice systems must be recognized fully in providing forensic services. Service providers must receive specialized training in complex legal issues, evaluations, courtroom testimony, court report writing protocols, and ethical issues specific to this area of practice. In all forensic service activities, providing high quality evaluation and treatment services to individuals must be balanced constantly with adhering to legal standards and preserving public safety as the behavioral health services and criminal justice systems work in partnership to achieve this balance.

It is also the policy of the Board that the Department shall fulfill the following responsibilities related to forensic services:

- Provide or arrange for the provision of forensic evaluation and treatment services in state hospitals, consistent with the *Code of Virginia* and within the constraints affecting other individuals seeking state hospital services or as ordered by the courts;
- Provide leadership for the further development of forensic services with CSBs, criminal courts, and law enforcement authorities;
- Provide ongoing training, educational, and research activities regarding the development, provision, and evaluation of forensic evaluation and treatment services;
- Provide to the greatest extent possible consultation to and appropriate oversight of forensic evaluation and treatment services provided by local and regional jails, juvenile detention facilities, the Department of Juvenile Justice, and the Department of Corrections to ensure these services meet nationally recognized standards and comply with applicable licensing regulations;
- Support and participate in statewide forensic training and education, including organized public education and information programs and stakeholder workgroups, to improve the knowledge and skills of law enforcement personnel, judges and court personnel, attorneys, local and regional jail and

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juvenile detention facility staff, community-based clinicians and policy makers, and state agency and state hospital staff and provide expert consultation to state and local health, public safety, and education agencies; and

- Maintain or arrange for sufficient capacity to provide for the timely admission of individuals referred by the criminal courts for inpatient evaluations or treatment to the greatest extent practicable, pursuant to the applicable provisions of Chapters 11 and 11.1 of Title 19.2 of the *Code of Virginia*.

Further, it is the policy of the Board that the Commissioner shall fulfill the following responsibilities related to forensic services:

- Designate hospitals as appropriate for evaluation and treatment of individuals under criminal charge, as required by § 19.2-169.1 (B), § 19.2-169.2 (A), §19.2-169.5 (B), and §19.2-169.6 (B) of the *Code of Virginia*;
- Maintain an exclusive list of standardized measures of intellectual functioning that are generally accepted by the field of psychological testing for use in determining mental retardation in capital cases and approve the specialized training of mental health experts appointed, pursuant to § 19.2-264.3:1.1 and § 19.2-264.3:1.2 of the *Code of Virginia*; and
- Designate hospitals appropriate for the evaluation of juveniles against whom a delinquency petition has been filed, approve the training and qualifications for individuals authorized to conduct juvenile competency evaluations, provide all juvenile courts with a list of guidelines for the courts to use in the determination of qualifying individuals as experts in matters relating to juvenile competency and restoration, and provide direct competency restoration services, pursuant to §16.1-356 and § 16.1-357 of the *Code*.

It also is the policy of the Board that CSBs shall fulfill the following responsibilities related to forensic services:

- In conjunction with local courts and law enforcement agencies in their service areas, develop and implement to the greatest extent possible organizational structures and mechanisms to enhance the delivery of community forensic services to individuals needing them, including written agreements to facilitate access to community forensic services;
- Consult with local courts in placement decisions for hospitalization of consumers with a forensic status based on the individual's clinical condition and need for a secure environment and on other relevant factors;
- Consider seeking designation by the Commissioner of local hospitals for the treatment and evaluation of persons under criminal charges, in accordance with § 19.2-169.1 (B), § 19.2-169.2 (A), § 19.2-169.5 (B), and §19.2-169.6 (B) of the *Code of Virginia*;
- Provide or arrange for the provision of forensic evaluations, consistent with the *Code of Virginia* and within the constraints affecting others seeking these services or as ordered by the courts;

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- Work jointly with Department staff to the greatest extent possible in evaluating, planning for the treatment, conditional release, or discharge of, and implementing conditional release of insanity acquittees in the community, pursuant to §§ 19.2-182.2 through 19.2-182.16 of the *Code of Virginia*; and
- Provide community forensic treatment services to the greatest extent possible, within the same constraints that affect others seeking CSB services or as ordered by the courts, to consumers who have been adjudicated NGRI, when they have been released or discharged to the community.

Further, it is the policy of the Board that CSBs provide treatment services, within the same constraints that affect others seeking their services or as ordered by the courts, to inmates when they have been released from DOC facilities, DJJ correctional centers and halfway houses, juvenile detention facilities, or local or regional jails to the community.

It is also the policy of the Board that individuals with mental illnesses or emotional disturbances, mental retardation, or substance use or co-occurring disorders in DOC facilities, DJJ correctional centers and halfway houses, juvenile detention facilities, or local or regional jails should receive appropriate, quality mental health or substance abuse treatment services when they need them. State hospitals shall not admit these individuals unless they meet the criteria in § 19.2-169.6, § 19.2-182.2 et seq., or § 37.2-817 of the *Code of Virginia* for the involuntary admission of adults or in § 16.1-345 of the *Code of Virginia* for the involuntary admission of minors. The Department shall work cooperatively on the state level with the Departments of Corrections, Juvenile Justice, and Criminal Justice Services and the Compensation Board and CSBs shall work cooperatively on the local and regional levels with DOC facilities, DJJ correctional centers and halfway houses, juvenile detention facilities, and local and regional jails to determine how best to meet the mental health and substance abuse treatment service needs, including psychotropic medications, of inmates or juvenile detainees in those facilities.

Further, it is the policy of the Board to support the development and operation of mental health case management and outpatient treatment services in all juvenile detention facilities to evaluate and treat the mental health service needs of juvenile detainees and arrange necessary transition and follow up services when they are discharged back to their communities in order to reduce or eliminate their readmission to these facilities. The Department and CSBs shall seek funds for and implement these services to the greatest extent possible in order to reduce or eliminate repeated involvement of these individuals in the criminal justice system.

Finally, it the policy of the Board to encourage and support the identification, development, and implementation of an array of post-incarceration and re-entry services and initiatives to provide treatment and support services to individuals with mental illnesses or emotional disturbances, mental retardation, or substance

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use or co-occurring disorders after their release from DOC facilities, DJJ correctional centers and halfway houses, juvenile detention facilities, or local or regional jails. The Department and CSBs shall seek funds for and implement an array of these post-release services and initiatives to the greatest extent possible in order to reduce or eliminate repeated involvement of these individuals in the criminal justice system.